

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

----- X  
STEVEN HARRIS, CRYSTAL CARLSON and :  
GEANA JONES, On Behalf of Themselves and All :  
Other Persons Similarly Situated, :

Plaintiffs, :

v. :

DESA INDUSTRIES, INC. d/b/a WORLD :  
PATENT MARKETING and SCOTT COOPER, :

Defendants. :

Case No.: 16-cv-09828 (JSR)

----- X  
**NOTICE OF MOTION**

PLEASE TAKE NOTICE that Defendants Desa Industries, Inc. d/b/a World Patent Marketing (“WPM”) and Scott Cooper (collectively “Defendants”) hereby move this Court, before the Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl St., New York, NY 10007-1312, for an Order, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, Dismissing Plaintiffs’ Amended Class Action Complaint, and granting such other and further relief as the Court may deem just and proper.

Defendants move to dismiss the Amended Complaint in its entirety based on the alternative dispute resolution provision by which the parties are contractually bound, or in the alternative, to stay pending mediation and arbitration. In the alternative, Defendants move to dismiss the Amended Complaint in its entirety under Fed. R. Civ. P. 12(b)(6) on the ground that it fails to state a claim for which relief may be granted. Defendants’ Motion is based upon this Notice of Motion; Defendants’ Memorandum of Law in Support of Defendants’ Motion to Dismiss Plaintiffs’ Amended Class Action Complaint; the pleadings on file and the proceedings

previously held in this action; such matters and facts of which the Court may take judicial notice;  
and the argument of counsel herein.

Dated: February 23, 2017  
New York, NY

Respectfully submitted,

CREIZMAN LLC

By: /s/ Eric M. Creizman

Eric M. Creizman

565 Fifth Avenue, 7th Floor

New York, New York 10017

Telephone: (212) 972-0200

Facsimile: (646) 200-5022

Email: [ecreiz@creizmanllc.com](mailto:ecreiz@creizmanllc.com)

*Attorneys for Defendants Desa Industries, Inc.  
d/b/a World Patent Marketing and Scott Cooper*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that I electronically filed true and correct copies of the Memorandum of Law in Support of Defendants' Motion to Dismiss Plaintiff's Amended Class Action Complaint with the CM/ECF filing system, which will send a notice of electronic filing to the email addresses registered with the CM/ECF filing system service list.

Dated: February 23, 2017

/s Eric M. Creizman  
Eric M. Creizman